

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of

ASC Telecom, Inc. d/b/a Alternatel

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) File No. EB-02-TC-136
) NAL/Acct. No. 200232170006
) FRN: 0004372835
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NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 17, 2002

Released: September 23, 2002

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we propose to assess a forfeiture in the amount of \$1,440,000 against ASC Telecom, Inc., d/b/a Alternatel ("ASC"),¹ for apparent widespread violations of the Communications Act of 1934, as amended (the "Act"), and the Commission's rules governing operator service providers ("OSPs").² These violations appear to be particularly egregious because they appear to have occurred as part of a deliberate plan to mislead consumers.

II. BACKGROUND

2. ASC provides operator services that can be accessed through aggregator telephones across the United States.³ These include hotel and motel room phones, as well as payphones located in airports, train stations, shopping malls, gas stations, and other locations where they serve the public or transient users. As an operator service provider, ASC is required to identify itself audibly and distinctly at the beginning of each call, before the consumer incurs any charge; to permit the consumer to terminate the call at no charge before it is connected; to provide its rates to consumers upon request; and to provide

¹ ASC is a subsidiary of Sprint Corporation. See ASC's 2002 FCC Form 499-A Telecommunications Reporting Worksheet. Our records indicate that ASC is located at 2330 Shawnee Mission Parkway, Westwood, KS, 66205 and at 6860 W. 115th Street, Overland Park, KS 66211.

² 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(B), (b)(1)(C)(i); 47 C.F.R. §§ 64.703(a)(1), (a)(2), (a)(3)(i), (a)(4). Our action in this Notice of Apparent Liability ("NAL") does not preclude further enforcement action. The staff is continuing to investigate ASC's practices to determine whether they violate the Act and our rules in other respects.

³ "Operator services" are defined by the Act and the Commission's rules as "any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer." 47 U.S.C. § 226(a)(7)(A)-(B); 47 C.F.R. §§ 64.708(i)(1)-(2), (l). An "aggregator" is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. § 226(a)(2); 47 C.F.R. § 64.708(b).

instructions to the consumer on how to obtain the total cost of the call, which must be available either by dialing no more than two digits or by remaining on the line.⁴

3. Over the last several months, the Commission has received complaints from consumers who were connected to ASC and billed for charges substantially higher than expected. For instance, one consumer complained of attempting to dial 1-800-COLLECT to place a long distance call using MCI's service, and later receiving a bill from ASC for \$5.06 per minute.⁵ Another consumer complained of attempting to place a call through AT&T, and being charged \$10.80 by ASC for leaving a 30-second voice mail message.⁶ This pattern of complaints suggested that consumers' dialing errors (for instance, dialing 1-800-COLLETT instead of 1-800-COLLECT) were connecting them to ASC, rather than the desired carrier, and that ASC's failure to identify itself as required caused these errors to go unnoticed. The Enforcement Bureau initiated an investigation into ASC's practices to determine whether ASC was in compliance with the requirements for OSPs. As set forth in detail below, that investigation showed apparent widespread violation of the Commission's rules, which appears to be part of a deliberate scheme to take advantage of consumers' dialing errors.

III. DISCUSSION

A. Legal Requirements

4. Pursuant to Section 226(b)(1)(A) of the Act and Section 64.703(a)(1) of the Commission's rules, each provider of operator services must identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call.⁷ This practice is known as "branding." The purpose of branding is to ensure that the consumer knows who is carrying the call, in time to request rate information, and to decide whether to use that carrier's services. The branding requirement is intended to reduce the opportunity for carriers to impose excessive charges on uninformed consumers. In collect calling arrangements handled by a provider of operator services, both the party on the originating end of the call and the party on the terminating end of the call are considered "consumers."⁸ Therefore, to ensure that both parties are fully informed when making decisions regarding whether to initiate or accept a collect call, an OSP is required to brand on both ends of such calls.

5. Each provider of operator services must also disclose immediately to the consumer, upon request and at no charge, a quotation of its rates or charges for the call.⁹ For collect calls, OSPs must provide this rate information to both the called party and the calling party.¹⁰ In addition, each provider of operator services must disclose audibly and distinctly to the consumer, at no charge and before connecting any call, instructions on how to obtain the total cost of the call or the maximum possible total cost of the call, before providing further oral advice to the consumer on how to proceed to make the call.¹¹ This oral disclosure must instruct consumers that they may obtain applicable rate quotations either, at the option of

⁴ 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(C)(i); 47 C.F.R. §§ 64.703(a)(1), (a)(3)(i), (a)(4).

⁵ Complaint No. IC-02-W2370064, dated January 30, 2002, from Claudia Valderrama-Celaya.

⁶ Complaint No. IC-02-W2570712, dated February 27, 2002, from Elizabeth and Jeffrey Moberg.

⁷ 47 U.S.C. § 226(b)(1)(A); 47 C.F.R. § 64.703(a)(1).

⁸ 47 C.F.R. § 64.708(f).

⁹ 47 U.S.C. § 226(b)(1)(C)(i); 47 C.F.R. § 64.703(a)(3)(i).

¹⁰ See 47 C.F.R. §§ 64.703(a)(3)(i), 64.708(f); *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 4532, 4541 (1996).

¹¹ 47 C.F.R. § 64.703(a)(4).

the provider of operator services, by dialing no more than two digits or by remaining on the line.¹² Each provider of operator services must also allow the consumer to terminate the call at no charge before the call is connected.¹³

B. The Investigation

6. As part of our investigation, Commission staff went to several aggregator locations and placed multiple calls, including collect calls, via ASC from approximately 25 different payphones. Commission staff was also on the receiving end of some of these collect calls to determine whether ASC identified itself to the called party as well. The staff placed the calls from payphones in locations that are heavily used by consumers and travellers in the Washington, D.C. area, such as Reagan National Airport, Union Station, and L'Enfant Plaza Shopping Mall, as well as the Commission's own lobby. To determine whether ASC was handling calls that were likely the result of misdialed access codes, the staff placed calls using 10 different toll free numbers that are similar to well known operator service access numbers, such as MCI's 1-800-COLLECT, and AT&T's 1-800-CALLATT.¹⁴ The numbers were called multiple times, at different locations and times, to determine whether there was a pattern of misconduct, and to preclude the possibility that any lack of compliance was an anomaly.

7. Our investigation revealed that ASC failed to brand at the origination point of the telephone call on all 10 of the telephone numbers dialed, and failed to brand at the termination point on two of the 10 telephone numbers.¹⁵ Our investigation also revealed that ASC failed to provide rates or charges, or failed to provide instructions on how to obtain rates or charges, on four of 10 telephone numbers.¹⁶ In addition, on two calls that were placed from Union Station, the called party was charged \$12.78 for each of two collect calls that were rejected by the called party.¹⁷ Based on these facts, we find that ASC is apparently liable for 12 separate violations of the branding requirement of Section 226(b)(1)(A) of the Act and Section 64.703(a)(1) of the Commission's rules; for four separate violations of the rate disclosure requirements of Section 226(b)(1)(C)(i) of the Act and Sections 64.703(a)(3)(i) and 64.703(a)(4) of the Commission's rules; and for two separate violations of Section 226(b)(1)(B) of the Act and Section 64.703(a)(2) of the rules for charging for collect calls that were rejected.¹⁸ We note that although we have only proposed forfeitures for the first of each type of violation associated with each access number for a total of 18 violations, the calls made during our investigation revealed numerous (43) additional violations that are not the subject of this NAL.

IV. FORFEITURE AMOUNT

8. Pursuant to the Commission's *Forfeiture Policy Statement*, the base amount for violations of the operator services requirements is \$7,000.¹⁹ The maximum potential forfeiture is \$120,000 for each

¹² *Id.*

¹³ 47 U.S.C. § 226(b)(1)(B); 47 C.F.R. § 64.703(a)(2).

¹⁴ See Appendix A.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Telephone Bill from billing agent for ASC, Operator Assistance Network for \$25.56, Appendix B.

¹⁸ We note that even for non-operator service calls to which this rule does not apply, it would be a violation of Section 201(b) of the Act to charge a called party for a rejected collect call.

¹⁹ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17097 (1997) (*Forfeiture Policy Statement*).

violation.²⁰ Based on the criteria in Section 503(b)(2)(D) of the Act and the upward adjustment criteria in the *Forfeiture Policy Statement*,²¹ however, we find that a substantial upward adjustment of the base forfeiture amount of \$7,000 appears to be warranted because the violations here appear to be egregious and repeated, because ASC appears to have realized substantial economic gain from its misconduct, and because substantial consumer harm appears to have resulted from ASC's pattern of misconduct.

9. We believe that ASC's practices are particularly egregious for several reasons. First, it appears that ASC has willfully and deliberately devised a scheme repeated on numerous access numbers intended to mislead unwitting consumers into using their operator services while the consumer is attempting to dial another OSP. For example, if a consumer trying to dial 1-800-CALLATT misdials by one number, that customer will reach ASC instead of AT&T. The consumer remains unaware that he or she has misdialed because ASC fails to identify itself. We believe that in using such deceptive means to obtain the consumer's business, ASC's practices are analogous to slamming and should be penalized accordingly.²² The consumer is even further left in the dark by not being able to obtain rate information that is essential for consumers who wish to make informed choices in a competitive telecommunications market. This is particularly egregious in light of the fact that the rates ASC charges are significantly higher than the industry average, and we have seen two examples where the called party was charged \$12.78 for a collect call that was rejected.²³ We believe, therefore, that ASC realizes a substantial economic gain from these insidious practices. Moreover, it appears that these misdialed numbers, such as 1-800-CALLALT or 1-800-CATTATT, are not advertised as a means of reaching ASC. Therefore, it appears that ASC's only customers are those who make a mistake in attempting to dial another OSP's access code.

10. Furthermore, while both parties to a collect call are involved in making choices regarding whether to use an OSP's services, we believe that it is particularly troubling that the called party, the party that ultimately incurs the charges for the call, is not able to obtain the rates before accepting the call. Many consumers, reluctant to refuse a call from a relative or loved one for fear of an emergency, are therefore forced to enter unwittingly into an agreement to pay significantly higher rates than they would otherwise pay by accepting such a collect call, and ASC reaps the benefits of such higher rates.

11. Accordingly, after applying the *Forfeiture Policy Statement* and statutory factors to the facts before us, we conclude that an \$80,000 forfeiture is apparently warranted for each of the 18 violations of Sections 226(b)(1)(A), 226(b)(1)(B), and 226(b)(1)(C)(i) of the Act and Sections

²⁰ Section 503(b)(2)(B) provides for forfeitures up to \$100,000 for each violation or a maximum of \$1,000,000 for each continuing violation by common carriers or an applicant for any common carrier license, permit, certificate or similar instrument. 47 U.S.C. § 503(b)(2)(B). The Debt Collection Improvement Act of 1996 (DCIA) requires, however, that civil monetary penalties assessed by the federal government be adjusted for inflation based on the formula outlined in the DCIA. See Pub L. No. 104-134, § 31001, 110 Stat. 1321 (1996). The current statutory maxima pursuant to Section 503(b)(2)(B) are \$120,000 and \$1,200,000 for individual violations and continuing violations, respectively. See 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2), (5); see also *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000).

²¹ 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01.

²² Slamming is the unauthorized change of a subscriber's preferred carrier. Section 258 of the Act, as amended by the Telecommunications Act of 1996, states that "[n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." 47 U.S.C. § 258. The Commission has used a base amount of \$80,000 for slamming involving forged letters of agency, a deceptive practice analogous to that at issue in this case. See, e.g., *Amer-I-Net Services Corporation*, Order of Forfeiture, 15 FCC Rcd 3118 (2000); see also *Brittan Communications International Corp.*, Order of Forfeiture, 15 FCC Rcd 4852 (2000).

²³ See Telephone Bill from billing agent for ASC, Operator Assistance Network, for \$25.56, Appendix B.

64.703(a)(1), 64.703(a)(2), 64.703(a)(3)(i), and 64.703(a)(4) of the Commission's rules, resulting in a total proposed forfeiture amount of \$1,440,000.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, ASC Telecom, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$1,440,000 for willful or repeated violations of Sections 226(b)(1)(A), (b)(1)(B), and (b)(1)(C)(i) of the Act, 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(B), (b)(1)(C)(i), and Sections 64.703(a)(1), 64.703(a)(2), 64.703(a)(3)(i), and 64.703(a)(4) of the Commission's rules, 47 C.F.R. §§ 64.703(a)(1), 64.703(a)(2), 64.703(a)(3)(i), 64.703(a)(4). The amount specified was determined after consideration of the factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), and the guidelines enumerated in the *Forfeiture Policy Statement*.

13. IT IS FURTHER ORDERED, pursuant to Sections 1.80(f)(3) and 1.80(h) of the Commission's Rules, that ASC Telecom, Inc., within thirty days of the date of release of this Notice of Apparent Liability, SHALL PAY the full amount of the proposed forfeiture²⁴ OR SHALL FILE a written response showing why the proposed forfeiture should be reduced or not imposed.²⁵

14. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail, return receipt requested, to ASC Telecom, Inc at 6860 W. 115th Street, Overland Park, KS 66211.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁴ The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. ASC should include the reference "NAL/Acct. No. 200232170006" on its check or money order. Such remittance must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. See 47 C.F.R. § 1.1914.

²⁵ 47 C.F.R. §§ 1.80(f)(3), (h). Send or mail any written responses regarding the reasons why the forfeiture should be reduced or not imposed to Federal Communications Commission, Enforcement Bureau, Telecommunications Consumers Division, 445 12th Street, S.W., Washington, D.C., 20554, ATTN: NAL/Acct. No. 200232170006. Any written response should focus on the mitigating factors outlined in the *Forfeiture Policy Statement* and Section 503(b)(2)(D) of the Act.

APPENDIX**ASC OSP VIOLATIONS - 2002****1 (800) COOLLECT**

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)*, 5/31, 6/4, 6/6, 6/12

1 (800) CALL – ALT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 6/4, 6/13

1 (800) CULLECT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 6/4, 6/6, 6/12

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4

1 (800) COLLEC7

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 5/31, 6/4, 6/6, 6/12

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4)(Failure to Provide Rate Information at Termination Point): 6/6

Violation of 47 CFR § 64.703(a)(2)(Connection Fee Charged at Termination Point Without Authorization): 6/4

1 (800) CATT – ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 6/4, 6/6, 6/13

1 (800) OOERATOR

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 6/4, 6/6, 6/12

1 (800) PERATOR

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 6/4, 6/6

1 (800) COL9ECT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 5/31, 6/4, 6/6, 6/12

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4)(Failure to Provide Rate Information at Termination Point): 6/4

1 (800) COLLETT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 5/31, 6/4, 6/6, 6/12

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4)(Failure to Provide Rate Information at Termination Point): 6/4

Violation of 47 CFR § 64.703(a)(2)(Connection Fee Charged at Termination Point Without Authorization): 6/4

1 (800) COOLECT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 5/31, 6/4, 6/6, 6/12

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4)(Failure to Provide Rate Information at Termination Point): 6/4

*Denotes two violations on that particular date.